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**DOMESTIC AND INTERNATIONAL
GRANTMAKING:
THE COMFORT OF CODES**

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Introduction

This paper focuses on codes of practice in domestic (in-country) and international (out of country) philanthropic giving/grantmaking, their similarities and differences. Codes of principle and practice are interesting not so much because they accurately reflect differences in practice on the ground, but rather because they indicate what is considered important or relevant, as well as aspirational. Codes tell us what people are most concerned about – what is seen to be in need of regulation or reminder.

The paper begins by looking at, first, the origins of demand for codes of practice in philanthropic giving and second, at the nature and purposes of codes. The third section of the paper outlines the content of three domestic, two international disaster and one broad international code, and discusses their similarities and differences. Finally, the paper considers some of the strengths and limitations of codes of practice.

The Rise in Demand for Codes of Philanthropic Giving and Aid

In the last decade a growing number of grantmaking trusts and foundations throughout the world, via their associations, have developed codes of good practice (Ebrahin, 2003). Where is the pressure for codes of practice coming from, and why?

Attention to the way in which non-profit organisations in general work has arisen in part from a wider culture of growing concern over accountability and standards in public life (Cadbury, 1997; Power, 1997). In a number of countries in recent years there have been heavily publicised scandals in government and corporate life, leading to efforts to redefine and reassert expectations of acceptable conduct (Gibelman & Gelman, 2001). The non-profit sector, so long regarded by many as a repository of trust, has not completely escaped demands for greater accountability.

Accountability is of heightened significance in the light of new policy agendas. 'The Third Way', social coalition, cross-sector alliances and partnerships are now central policy tenets. Government as 'steering not rowing' and the associated growth of contracting out creates new and complex dilemmas in relationships between organisations involved in public service delivery and spending public money both at home and abroad. Recognition of the importance of the non-profit sector has focused attention on the roles of non-profit organisations in a democracy, including their power without responsibility.

Media attention in various countries (including the US, UK and Australia) has led to questions about issues ranging from salaries to reserves to poor quality, and in some cases positively damaging, services. Throughout the world, there have been various recent scandals concerning fraud and misappropriation of funds within non-profit organisations, including foundations. Specific scandals within non-profit organisations have largely been explained as perpetrated by individual rogues rather than an indication of deeper structural problems. Nevertheless the fact that rogues have been able to operate undetected for significant periods of time has led to questions regarding the adequacy of non-profit organisation governance and accountability structures and processes (Ilchman and Burlingame, 1999; Crimm, 2002; Ebrahim, 2003).

More generally, in various countries there is growing evidence of a loss of public trust and confidence in non-profit organisations including trusts and foundations (Salamon, 1997; Henley Centre, 1997a and b; Independent Sector, 1994). This loss of public trust and confidence in the sector is matched by growing questioning in academic theory and research of the characteristics of non-profit organisations. Traditionally, non-profit organisations including trusts and foundations have claimed for themselves certain virtues and functions including a capacity for innovation, greater cost effectiveness and flexibility, greater efficiency, greater understanding of users, lack of bureaucracy, greater democracy and so on. These virtues have largely been taken for granted despite the lack of systematic empirical evidence to support them. More recently academic research has begun to question the basis for such claims (for a summary, see McInay, 1998; also see: Fleishman, 1999; Sogge, et al, 1996; Hulme and Edwards, 1990; Lewis and Wallace, 2000; Anheier and Leat, 2002).

The new emphasis on the role of non-profit organisations in creating social capital and civil society has, on the one hand, provided a new (and difficult to validate empirically) rationale for supporting such organisations and, on the other hand, has increased the research and policy attention devoted to understanding what non-profits do and how (Cox, 1995; Crooke, 1997). Given that the social capital and civil society rationales attach considerable significance to the democratic styles and functions of non-profit organisations, issues of governance and accountability are of crucial importance (Howell and Pearce, 2000).

Issues of public accountability arise in part from the fiscal and legal privileges conferred on certain categories of organisations seen as providing public benefit (i.e. charities, and similar categories). With growing emphasis on the role of non-profit organisations in

society, governments in various countries, including Australia, have sought to encourage such organisations by various means including creation of a conducive fiscal climate. As the scope and scale of taxation have grown, the value of the tax advantages enjoyed by charities has also increased. As the sums of 'lost' public revenue grow there is likely to be greater concern regarding the use of such monies.

In some countries new emphasis on the roles of non-profit organisations in government policy has led to new awareness of the size of foundation assets and income. In addition, some endowed foundations have enjoyed spectacular increases in income in recent years due, in part, to booming property and investment values and, in part, to the proceeds of take-overs and mergers. In Australia some foundations have also enjoyed significant windfalls from the changes to tax imputation credits.

The growing privatisation of provision and aid has meant that non-profit organisations may be in receipt of larger sums of state funding and, more significantly, instead of providing the 'extras' non-profit organisations are now regarded as central players in the provision of services for which governments accept some responsibility at home and abroad.

Greater demands for accountability from government funders have largely taken the form of contracts for service. These have not only increased and formalised accountability responsibilities but also created tensions in some organisations. These tensions have concerned the appropriateness of government funders' accountability demands, criteria and processes; parallel relationships with varying accountability to other stakeholders; and effects on internal governance. One wider effect has been to raise questions about the accountability and governance of all non-profit organisations, whether on contract or not. In some cases, foundations have been asking more detailed questions of those they fund, which in turn has led to greater self-scrutiny.

Greater value of contracts and pass through funding to grantmakers from other donors has created an incentive for non-profit organisations to police their own world. Greater accountability not only protects good guys from bad guys, but may also raise barriers to new entrants.

Partly in response to some of the trends above, non-profit organisations, including foundations, have increasingly employed paid, professional technical and general managerial staff (Kramer, 1987; Kramer, 1990; Bruce and Leat, 1993; Brown et al,

2000). On the one hand, this may be seen as a way of making foundations and other non-profit organisations both better managed and more accountable. But, at the same time, the growth of paid professional staff within non-profit organisations raises new tensions in governance and accountability. In fund-raising particular concerns have arisen concerning increasing competition and adoption of 'commercial' practices.

One further strand in sources of pressure for change in governance and accountability of foundations and other non-profit organisations has been the ideology of consumerism. Like the business and public sectors, non-profit organisations have been subject to demands that the end-user, the consumer, be taken into account (Leat, 1988). Some foundations have responded to this movement by including end users in decision-making structures and processes. Others have responded by giving priority to grant applications from 'user-led' organisations. This may not only increase the complexity of decision making and appropriate accountability from grant recipients, but may also raise questions about foundations' own governance and accountability.

Codes of practice are only one of a range of accountability mechanisms adopted by non-profit organisations (Ebrahim, 2003). As illustrated in the following section, codes function to respond to some of the concerns above, but there are some interesting questions concerning why codes have been the response to these pressures for greater accountability, the number of overlapping codes and the players and processes involved in code-making/negotiation. It is also worth noting here that in Australia in order to receive Government money international aid organisations go through an accreditation process requiring, *inter alia*, that they are signatories to the ACFOA Code of Conduct; domestic organisations do not face this requirement. Why is there this difference, and how long will it be before government starts 'reading across' from its treatment of international aid organisations? These questions are beyond the scope of this paper (for a discussion of the wider issues of regulation and code making see, for example, Braithwaite and Drahos, 2000; Ogus, 2001).

The Nature and Purposes of Codes

Very broadly, codes of conduct arise where accountability between two, or more, parties is acknowledged but where there are operational difficulties in monitoring activities. Codes are thus particularly relevant to non-profit organisations where purchasers/donors and consumers/end-users are not the same and may move literally and figuratively in very different worlds. Paradoxically, the growth of codes has come in the context of wider

moves for 'de-regulation' – but, as Power (1997) notes, de-regulation is probably more accurately described as regulatory experimentation with self regulation. If 'de-regulation' is seen in this light codes have an obvious place.

Most codes are designed to provide reassurance, as well as some degree of protection. But who or what is to be reassured or protected varies. Donors are clearly one group in need of protection/reassurance. The Philanthropy Australia code is interesting not least because it is the only code considered here which explicitly lists operating in accordance with the wishes of founders/donors as the first 'principle' of philanthropy. The Australian Council for Overseas Aid (ACFOA) code also functions as a means of reassuring donors. The code: 'identifies mechanisms to ensure accountability in NGDO use of public monies'. The code is 'about ensuring that signatories conduct their business with integrity, that they meet minimum standards of accountability in humanitarian responses, that they have policies to ensure child protection, that they commit to gender equity in the governance and management of the organisation, that they provide professional development to their staff ...'. Thus 'The Code aims to maintain and enhance standards throughout the NGDO community, thereby ensuring that public confidence in the integrity of individuals and organisations comprising the NGDO community and in the quality and effectiveness of NGDO programs is well founded.' In this case, the code functions as a form of risk management for various parties, including government.

But donors (private and public) are not the only groups codes may aim to protect. For example, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (hereafter referred to as the ICRC code) is designed to protect beneficiaries, and the reputation of international aid organisations themselves: 'This Code of Conduct seeks to guard our standards of behaviour. It is not about operational details, such as how one should calculate food rations or set up a refugee camp. Rather, it seeks to maintain (the) high standards of independence, effectiveness and impact' (The ACFOA Code also refers to the ICRC, and other, international codes).

Protecting organisations from government 'interference' or legislation may be a powerful motive for code creation in both business and the non-profit sectors. But self-regulation, via codes, may also fulfil other functions. Codes can be seen as aiming to maintain the reputation of the non-profit industry as a whole, raise barriers to entry and build the basis for a system of quality brand name agencies (Sogge and Zadek, 1996, 82). Similarly,

their communication of normative views of 'acceptable' organisational behaviour codes may be seen as tools of national and global isomorphism (Ebrahim, 2003).

Codes vary on a number of dimensions. Codes may set minimum standards or good practice or best practice. Some codes openly acknowledge that the purpose is aspirational. The Association of Charitable Foundations (ACF) code is presented as a set of 'guidelines' and states: 'it is hoped that all funders will aspire to them, and follow them as much as individual circumstances and resources permit'. Similarly, the Philanthropy Australia code aims to 'foster good practice'.

Codes, in all sectors, are often voluntary. So, for example, ACF notes: 'The diverse range of interests and sectors represented by these organisations means that the Guidelines will not always apply to every funder'. Similarly, the ICRC code: 'is a voluntary code, enforced by the will of the organisation accepting it to maintain the standards laid down in the Code'; and the Philanthropy Australia code provides 'recommendations' to its members.

Some codes are clearly regulatory. But regulatory codes vary in the type and strength of sanctions attached to them. The sanction for breaching some codes is loss of membership of the organisation – which may or may not be an effective sanction. In other cases, breach of the code may lead to loss of accreditation or other badges of acceptability; but again, depending on the nature of the market, the authority of the accrediting agency, and the resources of the 'transgressor', this may or may not constitute a strong sanction. Loss of income, or significant loss of status, is probably the strongest sanction. Only one of the examples considered below has this strong sanction attached to it. The ACFOA code forms the basis for a complaints and compliance procedure and, more importantly, functions explicitly as part of the accreditation process which acts as a gateway to government funding. Failure to comply with the code entails being removed as a signatory to the Code and loss of membership of ACFOA and, if the agency is accredited with AusAid, loss of accreditation and thus loss of that source of funding.

Given the heterogeneity and ideology of independence within the non-profit sector, voluntary codes are almost certainly more common than regulatory codes. Another problem with regulatory codes is that to be effective they have to be enforced and that requires time, mechanisms and resources.

Finally, codes vary in content. Some codes set out basic principles; others focus on structure and process; yet others aim to cover both principle and practice.

Domestic Codes

1. Philanthropy Australia Code of Practice

This code is voluntary, offering 'recommendations' to Philanthropy Australia members. Its aim is 'to encourage best practice, openness and transparency in all aspects of grantmaking'. It focuses primarily on process. The code covers:

- Principles of Good Practice – these include operating in accordance with the wishes of the founder/donors; commitment to development and promotion of 'innovative, flexible and effective responses' to modern challenges; and acceptance by grantmakers that in 'fulfilling their particular role in helping build a just, sustainable and pluralistic society, it is important that there is openness, transparency, integrity, accountability and self-regulation in the provision of resources to grantees'.
- Legal responsibilities – basically setting out the legal responsibilities of trustees.
- Procedures – including the need for clarity and regular review of purposes; communicating purposes and procedures to the public; compliance with the privacy legislation; communication to grantseekers of monitoring, evaluation and reporting requirements; the need to be responsive to changing conditions in society and the 'needs and merits' of grantseekers; the value of obtaining independent, knowledgeable ideas and advice.
- Governance – including the importance of having an identifiable and properly constituted decision making body (Board); clear definition of the obligations of the Board, decision making procedures and authority to speak on behalf of the organization; providing information on activities to the public; prudent management and investment practices and sensitivity to conflicts of interest.

Finally, grantmakers are 'encouraged to maintain interaction with others in the field of philanthropy including Philanthropy Australia and its associated affinity groups as well as relevant state and national organizations'. Furthermore, 'Grantmakers are encouraged to share with others responsibility for strengthening the effectiveness of the many private and corporate philanthropic initiatives that serve the needs and interests of the Australian community' (Philanthropy Australia, 2002).

2. Guidelines for Funders (Association of Charitable Foundations, UK)

ACF's code of practice is a set of 'aspirational', voluntary 'guidelines'. The Guidelines focus on process issues, covering:

- Access to funding - Clear and timely publication of opportunities for funding and policies and processes; user-friendly application forms and accompanying instructions; special steps to ensure fair and equal access to information and funding across geographical areas; for black and ethnic minority groups; for groups from different religious and cultural backgrounds; for disadvantaged groups; and for those with special needs.
- Processing grant applications – Clarity, timeliness and fairness.
- Decision-making – Clear internal procedures for making grant decisions; arrangements to avoid conflict of interest; prompt notification of decisions; giving principal reasons for a refusal to make a grant.
- Selecting whom to fund – Judging applications on substance rather than presentation; dealing with diversity of funding sources, matching funding, double funding; ensuring grant recipients' commitment to equal opportunities in terms of their own personnel policies and the delivery of services to their clients.
- Payment procedures – Written confirmation of the grant offer and any conditions before payment is made; clear statement and content of grant conditions and arrangements for payment; monitoring and evaluation arrangements; and the circumstances in which funding might be terminated; payments in advance; agreed schedule of payments.
- Monitoring & evaluation – Appropriate measures of performance and outcome/output agreed at the outset; proportionality in monitoring and evaluation; appropriate levels of financial information and independent verification of accounts; clear, agreed arrangements for terminating funding in the event of unsatisfactory performance or breach of grant conditions.
- Dissemination – Encouraging organisations to disseminate the results of projects of general interest; making provision in the grant for dissemination; dissemination by funders where the results of evaluations would be useful for other funders and voluntary organisations.
- Changes to funding – Giving as much notice as possible of any changes in grant scheme policy or management arrangements; consultation of grant recipients prior to changes; adequate notice of termination.

3. Principles and Practices for Effective Grantmaking (Council on Foundations)

The Council on Foundations' Principles and Practices for Effective Grantmaking were first approved by the board of directors in 1980. In 1982, the board required that all members subscribe to the principles and practices. Thus this code is, in theory at least, different from the two previous codes in that it is intended to have some regulatory function, sanctioned by loss of membership of the Council. It is, however, similar to the two previous codes in being concerned primarily with structure and process, emphasising the need for:

- A set of basic policies that define the program interest and the fundamental objectives to be served.
- An identifiable board, committee or other decision making body with clear responsibility for determining those policies and procedures.
- Clear and logical processes for receiving, examining and deciding on grant applications consistent with the organisation's policies and purposes.
- Recognition that accountability extends beyond the narrow requirements of the law and policies that recognize these multiple obligations for accountability: to the charter provisions by which their founders defined certain basic expectations, to those charitable institutions they serve, to the general public, to the Internal Revenue Service and to certain state governmental agencies.
- Open communications with the public and with grantseekers about the policies and procedures that are followed in grantmaking
- A brief written statement about policies, program interests, grantmaking practices, geographic and policy restrictions, and preferred ways of receiving applications; prompt acknowledgment of the receipt of any serious application; prompt notification of steps and dates for decisions.
- Ways of informing the public concerning the foundation's stewardship through publication and distribution of periodic reports, newsletters, and so on.
- Relationships between grantors and grantee based on mutual respect, candor and understanding, with each investing the necessary time and attention to define clearly the purposes of the grant, expectations regarding reports related to financial and other matters and the provisions for evaluating and publicizing projects.
- Responsiveness to changing conditions in society and to the changing needs and merits of particular grantseeking organisations, via independent inquiries, special knowledge, experience and insight of individuals beyond those persons, families or corporations from which the funds originally came; attention to equal opportunities in the composition of decision making bodies/processes.

- Regular review of program interests, basic policies, board and staff composition, and assessment of the overall results of grantmaking.
- Procedures for ensuring against accusations of self-interest.
- Interaction with others in the field of philanthropy.

Codes for Grantmaking in Disaster

The next two codes specifically relate to grantmaking in disasters. Given that when these codes were developed there were already various codes of practice for grantmaking (EFC and CoF, for example, already had grantmaking codes) and international aid, the creation of these codes is interesting in itself. ‘Disasters’ were presumably seen as requiring special principles and practices not covered by existing codes. While the notion that disasters are, almost by definition, different has some obvious logic, when we look at the content of the code it is not clear why the principles and practices outlined are not equally applicable to all grantmaking.

Both of the following codes, like the two above, are voluntary but both are very different from the domestic codes above, and, in many respects, from each other.

1. Disaster Grantmaking: A Practical Guide for Foundations and Corporations (European Foundation Centre and Council on Foundations)

The EFC and CoF code was created by a specially convened Working Group in 2000. The Working Group produced: *Disaster Grantmaking: A Practical Guide for Foundations and Corporations* (EFC and COF November 2001) identifying eight principles of good disaster management.

The Guide begins by noting that approaches to disasters have changed in recent years shifting from a narrow concept of providing quick disaster relief based on charitable impulse to a broader concept of disaster management taking in community involvement in prevention and preparedness, mitigation, emergency relief, rehabilitation and long-term development that incorporates prevention and preparedness. The aim is to reduce people’s vulnerability to natural hazards; disasters are no longer seen as natural or inevitable but the result of social, economic and political factors that cause certain

populations to be vulnerable to impact of hazards. This requires a long term perspective that addresses root causes as well as immediate needs.

The Guide goes on to emphasise the variety of actors involved – governments, multilateral institutions and so on, as well as local organisations who know what help is appropriate and who is hardest hit. In this situation the key roles of foundations and corporate grantmakers in disaster management are said to be:

- ‘A mission to serve the public good in diverse ways
- Ongoing relationships with local organisations
- A long-term perspective, often five to ten years or more
- An ability to convene key actors across sectors and to serve as a catalyst for cross-sector collaboration
- A capacity to call attention to political, economic and social policies that exacerbate the vulnerability of populations to hazards
- Experience supporting research and disseminating results to interested parties
- Programmatic flexibility that permits them to respond creatively and strategically to disaster situations
- Administrative flexibility that permits timely action’ (p 6-7).

The Guide’s key principles of good disaster grantmaking are:

- First, do no harm – ‘Aim to ensure that your grant contributes to the solution not the problem’;
- Stop, look and listen before taking action – information is key to good disaster grantmaking;
- Don’t act in isolation;
- Think beyond the immediate crisis to the long-term;
- Bear in mind the expertise of local organisations;
- Find out how prospective grantees operate;
- Be accountable to those you are trying to help ‘Grantmakers are accountable, not only to their donors, boards and shareholders but also to the people they seek to assist ‘(p10);
- Communicate your work widely and use it as an educational tool.

More specifically, it is suggested that foundations should adopt the following practices.

1. Develop an internal plan for handling disaster requests, including internal guidelines and criteria for when and where you will make disaster grants and internal decision-making procedures for disaster grants; identify potential grantee partners in advance.
2. Learn about the disaster situation from an experienced international aid organisation or reputable local organisation rather than relying on media or government reports.
3. Think about when to make a disaster grant and consider supporting disaster prevention before it happens and/or splitting a grant into two parts – one for immediate relief and the other for later recovery and long-term development.
4. Decide whether to provide cash assistance, or goods and services, bearing in mind that cash is nearly always preferable because it allows greater flexibility and boosts local economies while reducing transport costs.
5. Look at the total disaster management picture; consider grants aimed at: disaster prevention and preparedness, gaps between relief and long-term development, conflict resolution or supporting care of refugees displaced, strengthening local organisational capacity to respond to future disasters, research on root causes of disasters, how people traditionally coped and what modern technology can contribute. Include funds to disseminate results.
6. Choosing a grantee – including options for channelling support via multilateral organisations, government agencies, international, national, local NGOs and so on. Look for grantees that support long-term community and economic development programs.
7. Coordinate disaster grants with others, explore partnerships and cooperation with other grantmakers, identify gaps that need filling and communicate what you are doing.
8. Set up procedures for monitoring and evaluating disaster grants using on-site monitoring where possible and make reporting requirements clear to grantees. Include assessment of wider social impact of the grant and try to use evaluation as a learning exercise with grantees as part of longer term development programme to improve future grant effectiveness.
9. Enhance understanding of disasters by educating boards, employees, donors and shareholders about the disaster cycle and how to apply a comprehensive disaster management approach; work with the media to raise public awareness and disaster coverage that goes beyond personal stories to root causes of disasters – political, economic and social factors that contribute to them and role of disaster prevention.

2. The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.

This voluntary code, prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC, provides a code of conduct along with three annexes, describing the working environment that 'we would like to see created by Host Governments, Donor Governments and Inter-governmental Organisations in order to facilitate the effective delivery of humanitarian assistance'. The Code of Conduct was sponsored by a range of larger international aid organisations. Again it is interesting to note that this code specifically relates to disasters, defined as 'a calamitous event resulting in loss of life, great human suffering and distress, and large scale material damage'.

The principles are:

1. The Humanitarian imperative comes first. The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. Aid is not a partisan or political act.
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.
3. Aid will not be used to further a particular political or religious standpoint. Humanitarian aid will be given according to the need of individuals, families and communities and will not be tied to acceptance of a particular political or religious creed.
4. NGHAs are agencies which act independently from governments.
5. Culture and custom shall be respected.
6. Disaster responses should be based on local capacities; working through local partners in planning and implementation, co-operating with local government structures where appropriate, and properly co-ordinating emergency responses.
7. Programme beneficiaries should be involved in the management of relief aid.
8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs. Long term development and sustainability are key issues.
9. Organisations should hold themselves accountable to both 'beneficiaries' and funders. 'Our programmes will be based upon high standards of professionalism and expertise in order to minimise the wasting of valuable resources'.
10. In information, publicity and advertising activities, disaster victims are recognised as dignified humans, not hopeless objects.

Some 'indicative guidelines' follow the Code, describing the working environment signatories to the Code would like to see created by donor governments, host governments and the inter-governmental organisations – principally the agencies of the United Nations – in order to facilitate effective disaster responses. Three Annexes set out recommendations to the governments of disaster affected countries, to donor governments, and inter-governmental organisations.

An International Code: the ACFOA Code of Conduct

The ACFOA Code of Conduct is different from the codes above in several respects. It differs from the EFC/CoF and the ICRC codes in that it is an international code but not specifically concerned with grantmaking in disasters; it is also different in being country specific (i.e. restricted to organisations based in Australia) and perhaps partly for that reason is more detailed in its recommendations.

The major difference between the ACFOA Code and all of the other codes considered above lies in its status. It is a disciplinary code setting standards 'to which signatories to the Code will be bound and against which the Complaints and Compliance Process will be assessed'. Failure to co-operate with the inquiry and reconciliation process is itself a breach of the Code, and the ACFOA code is backed by strong sanctions.

The ACFOA story

Before looking at the content of the ACFOA code it is worth telling the story of its creation and operation. The immediate trigger for construction of the code was a highly publicized scandal concerning one respected international aid organisation. Following the public scandal the Minister of the day established a Non Government Development Organisation Code of Practice Advisory Committee (COPAC) to investigate the issue. Members included a donor representative, two MPs, two NGO representatives, one AusAid representative and one accountant. COPAC recommended the establishment of a Code of Conduct. In fact, a rudimentary code of ethics already existed. This had developed out of ACFOA members' concerns about inappropriate fundraising images. As one person involved said: 'If aid organisations didn't understand why the code was necessary before ... they certainly did afterwards'.

The code was deliberately set at the level of minimum standards 'things they should be

doing anyway as legally incorporated bodies'. One of the key features of the code is that it requires reporting on a specific template so that the public can make meaningful comparisons between organisations 'giving the public more information to make choices'. Reporting to a template also allows ACFOA to develop benchmarks.

Originally, the aim was to give the general public a tool to act as watchdogs, but it is now recognized that this was a high expectation for two reasons. First, the public need to be aware of the code. Second: 'With the best will in the world very few people are going to follow it up. They believe there is a watchdog out there and want to leave trust to other people'.

Every year ACFOA monitors the financial and annual reports of all code signatories. Although the Chair of the Code of Conduct Committee can be called upon by the Minister of Foreign Affairs to discuss or report on activities or decisions, the Committee is seen as independent, administered by ACFOA, reporting to the ACFOA AGM and Council. An independent chair, not drawn from the sector, is seen as vital in offering independent donor protection and ensuring that 'the industry can't cover up'.

ACFOA attaches considerable significance to enabling organisations to comply with the code, providing a variety of training sessions to this end. In 2002, 5 organisations failed to comply with the code and 'resigned' from ACFOA. However, some suggest that it is important to be aware of how much of the code works behind the scenes via peer pressure. In some cases 'threat of the use of the code is sufficient'.

There are three steps and ways that sanctions operate, depending on the status of the organisation. First, non-compliance results in immediate loss of signatory status; organisations may reapply to become a Code signatory and will be accepted if they are assessed as fully compliant. Second, if the organisation is also a member of ACFOA, then the ACFOA Executive Committee is informed that the organisation is no longer compliant and thus no longer eligible for membership. In this case most organisations chose to resign rather than have their membership cancelled. Third, if the organisation is also accredited with AusAid, ACFOA formally notifies AusAid that they have been found non-compliant by the Code of Conduct Committee.

The relationship between the Code and AusAid accreditation came about because, at roughly the same time as the code was constructed, the Federal government audit office was reviewing AusAid management of funding. This led to proposals to reform the

accreditation process that was seen as neither rigorous nor consistent. AusAid proposed a raft of criteria, some borrowed from the ACFOA code, and in a meeting between AusAid and ACFOA it was agreed to replace some of the AusAid criteria with compliance with the ACFOA code. In retrospect some ACFOA staff feel that this has led to confusion concerning the roles of AusAid and ACFOA. ACFOA is very clear that the code is a form of self-regulation, as well as self-improvement and quality. ACFOA informs AusAid of non-compliance after an investigation by the independent Code of Conduct Committee. Some tensions have arisen when AusAid has asked for prior information of likely non-compliance.

The ACFOA story suggests that a crisis/scandal can give a real impetus to development of codes, and that both independence and sanctions are important in ensuring compliance. Another reason why the code appears to be generally accepted by organisations is that the Committee is responsive to requests for clarification and change. 'At the beginning there was a lot of wailing from organisations, now it's accepted because they realize they can give feedback and we are willing to work on change'.

Content

The ACFOA Code deals with its fundamental principles relating to the purposes and style of aid, briefly: 'Organisations which are signatories to this Code aim to build creative and trusting relationships with the people of the developing countries and to meet program standards which : 'give priority to the needs and interests of the people they serve; encourage self help and self-reliance among beneficiaries and thus avoid creating dependency; involve beneficiary groups to the maximum extent possible in the design, implementation and evaluation of projects and programs; respect and foster internationally recognised human rights, both socio-economic and civil-political; where possible seek to enhance gender equity; and are based on an understanding of the history and culture of the people served'.

The Code then specifies in some detail the required internal organisational structures and processes for governance, organisational integrity, finances, communication with the public, management practices and human resources.

Under Governance, the Code specifies that an organisation's governing instruments should set out its basic goals and purposes and define the governance and membership structure in line with legislative requirements. There should be clearly defined lines of

authority between the governing body and management; clear policies specifying the frequency of its meetings (at least two per year) and the number of members required for a quorum; written policies covering appointment, termination and remuneration of members of the governing body and policies restricting the number of paid staff who are voting members of the governing body; procedures for dealing with conflict of interest. There should be clear policies and practices for financial control by the governing body and for open and accurate disclosure of information concerning its goals, programs, finances and governance. An annual general meeting of its members should be held at which the annual audited financial statements are received and an independent auditor appointed.

Organisational integrity requires that, in all of its activities and particularly its communications to the public, an organisation should show respect to the dignity, values, history, religion, and culture of the people with whom it works. The organisation should be voluntary and not-for-profit. It should take prompt and firm corrective action against bribery, corruption and wrong-doing. It should have procedures for encouraging and dealing with 'whistle blowing'. The organisation should not denigrate other agencies, or make misleading or false public statements regarding other agencies.

Under Finances, the Code specifies internal control procedures that minimise the risk of misuse of funds and reporting mechanisms which facilitate accountability to donors; adequate procedures for the review and monitoring of income and expenditure; publication of an Annual Report with a financial report in accordance with the Standard NGDO Financial Reporting Format annexed to this Code and audited by at least a qualified accountant who is a member of the Australian Society of Certified Practicing Accountants or the Institute of Chartered Accountants in Australia or by a Registered Company Auditor. Donations should be used as promised or implied in fundraising appeals or as requested by the donor; there should be plans for handling any excess; use of ratios in publications should be accompanied by a note explaining how these have been determined.

Communication with the public requires an Annual Report provided to inquirers upon request. This should include a statement of the organisation's goals or purposes, a short-form financial statement, a summary of overall program activities and names, qualifications and experience of current members of the governing body. Fundraising messages should be truthful with no material omissions or exaggerations of fact, no use of misleading photographs, nor any other communication which would tend to create a

false impression or misunderstanding. In all fundraising activities, there should be policies to protect donors' rights to privacy and information. The organisation should be accountable for all fundraising activities conducted under its authority, and should have written contracts with professional fundraisers.

Under Management Practice and Human Resources, the Code specifies that the organisation should have clear policies and procedures relating to paid staff and volunteers working in Australia or overseas, clearly defining and protecting their rights, safety and fair treatment.

Differences Between Codes

In addition to the major difference in status and sanctions between the ACFOA code and all other codes above, one other difference is worth highlighting.

The three domestic codes are almost exclusively concerned with grantmaking procedures, governance and management, accountability and fundraising practices and so on. The EFC/CoF (disaster) code, and to an extent the International Red Cross and Red Crescent code, by contrast, focuses on purposes, values and principles including relationships with others; it emphasises foundations' roles in discovering causes of problems, prevention, education, avoiding dependency, building capacity, and working long term.

EFC/CoF recognition of the complex ecology/interaction of institutions and of the value of local knowledge is equally relevant but less clearly spelt out in domestic grantmaking codes. Similarly, emphasis on a longer-term perspective and addressing the social, economic and political causes of problems has obvious relevance to all grantmaking at home and abroad in disaster and non-disaster situations. Interestingly, however, these emphases are not obviously apparent in codes of practice dealing with domestic non-disaster grantmaking. Again, there is only token mention in domestic codes of accountability to beneficiaries or of the need to co-ordinate work with others including government.

The differences between domestic and international disaster codes raise some interesting questions. Why do code creators feel able to state values and principles in relation to disaster grantmaking and not in relation to domestic grantmaking? Do the

same values and principles not apply to domestic grantmaking? Or is it rather that foundations can agree on what they do 'over there' but not at home? More fundamentally, do foundations working internationally operate with different theories of problems and change as compared with those they operate with at home? Are international problems seen as structural in a way that domestic ones are not?

Strengths and Limitations of Codes

Codes are constructed in particular legal, social and political contexts. This has a number of implications. Codes of practice are always supplementary to any legal requirements relating to the activities covered by the code, and have to be read in the context of wider laws and codes. For example, as ACFOA notes: 'NGDOs are required to meet a range of state and federal legal obligations which are presumed in this Code. These obligations may include corporations laws, rules of incorporation of associations, fundraising and charitable institutions legislation, equal employment opportunity principles, occupational health and safety standards and anti discrimination legislation, intellectual property and copyright legislation and other codes of ethics'. This is one reason why codes constructed in one jurisdiction may not travel well to another.

The fact that codes are socially and politically constructed also means that they reflect the concerns that gave rise to them, and the purposes for which they were constructed. So, for example, the ACFOA code was born from an episode of loss of trust in the governance and management of Australian international aid organisations, and its focus clearly reflects those concerns and the purposes of reassuring donors, especially government donors, that these organisations are properly run, including ensuring protection for beneficiaries and care and professional development of staff.

Because codes are socially and politically constructed, they are also socially and politically constrained by the differences in values and viewpoints of those constructing them and to whom they apply. This is clearly illustrated in ACF's statement that the diversity of foundations is such that the (ACF) code cannot be equally applied to all – the code is 'aspirational'. Foundations in the UK are highly protective of their independence and pride their diversity, and do not accept 'direction'.

How important are codes of practice? As noted above, one important function of codes is to reassure donors and regulators that things are 'in hand'. Codes are a form of before

the event risk-management. As such they may take the place of the on-going monitoring by funders that many organisations regard as both overly time consuming and intrusive. But self-regulatory codes may also function in ways that cut-off rather than prompt questioning of conduct; such codes are also subject to the criticism that they are nothing more than ‘the most watered down common denominator stance and statement’ (Crooke, 1997, 14).

Codes alone cannot guarantee that things are being ‘properly’ governed and managed, and ‘proper’ governance and management do not, in any case, guarantee effective pursuit of roles and purposes. An organisation may comply with all of the requirements of a process based code and still be ineffective in achieving its goal of, say, reducing poverty.

The primary job of codes is to reduce transaction costs – we replace trust in organisations with trust in the code. The code is our comfort blanket. But unfortunately codes cannot do all that is expected of them, and may do some things which are not intended. Codes, like audits, can create the distrust they presuppose and/or they can lead to all sorts of ‘organisational pathologies and fatal remedies’ (Power, 1997) if the organisations become driven by compliance with the code rather than the fundamental purposes of the organisation.

With some exceptions, domestic codes tend to be silent on roles, relationships, values and principles of giving and on the theories of change, solutions and intervention with which grantmakers operate. The job of codes, as noted above, is primarily to tell us about processes and structures rather than about goals, values and approaches. But even if we assumed that certain structures and procedures could guarantee effectiveness, codes alone appear to be relatively weak tools.

The evidence suggests that codes, in all sectors, without strong and consistently applied sanctions achieve rather little (King and Lennox, 2000). For example, implementation of The International Council of Voluntary Agencies guidelines for relations between Northern and Southern NGOs has been a problem because agencies cannot enforce them (Saxby, 1996, 57). Similarly, when AmeriCares pulled out of the US agency InterAction because it found the code of ethics too strict it did so with impunity (Sogge and Zadek, 1996, 82). Similarly, a survey of major US domestic foundations suggested that few had taken any action to ensure that codes were implemented, and many had difficulty in even naming the codes (Bothwell, 2001).

But this does not necessarily mean that codes are unimportant. Codes may function as important symbolic statements of how things ought to be, providing aspirational standards and mental and practice traffic lights. Codes may serve to shape standards and provide tools in the process of normative isomorphism.

Codes are important but they need to be understood for what they are. Codes are one of a range of tools designed to do a particular job. The danger is that codes provide more comfort than they warrant, acting as a means of closing off information, criticism and questions rather than stimulating more (Day and Klein, 1987). There are some jobs they cannot do. Codes may tell us if organisations are road-worthy, but they cannot tell us the directions in which organisations could or should be heading and the knowledge and values on which such decisions are based. There is now an urgent need to turn our attention to some of those neglected tasks including that of debating the roles, values and principles of philanthropic giving in a global society with new problems and new political agendas.

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